

No. 5 of 1952.

Deserted Wives and Children Act 1951.

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AN ACT

entitled

Deserted Wives and Children Act 1951,

Being an Act relating to deserted wives and children

MADE by the National Parliament.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears –

“**child**” means a child under the age of 16 years whether born in wedlock or not;

“**Court**” means a District Court;

“**means of support**” means lawful and sufficient means of support and in the case of a wife means lawful and sufficient means of support other than her own earnings.

PART II. – JURISDICTION AND PROCEDURE.**2. POWER OF COURT TO ISSUE SUMMONS OR WARRANT.**

(1) Where –

- (a) a husband has unlawfully deserted his wife or left her without means of support; or
- (b) a father has deserted his child or left him without means of support; or
- (c) a husband or father is about to leave the country without making adequate provision for the support of his wife or child,

a Court, on complaint on oath being made by the wife or by the mother of the child or by reputable person on behalf of the wife or child, may –

- (d) issue a summons requiring the husband or father to appear before it to show cause why he should not support his wife or child; or
- (e) where it is satisfied that the circumstances justify it doing so, issue a warrant for arrest of the husband or father.

(2) Where a warrant has been issued and the defendant cannot be found the Court, on proof of inquiry and search, may proceed in the case *ex parte*.

3. HEARING AND ORDER.

(1) On the hearing of a complaint under Section 2, the Court shall inquire into the matter and –

- (a) where it is satisfied that –
 - (i) the wife is left without means of support; or
 - (ii) the defendant is about to leave the country without making adequate provision for her support,
 the Court may –
 - (iii) order the defendant to pay such allowance as it considers reasonable for the use of the wife; and
 - (iv) commit the legal custody of a child of the marriage to a wife or some other person; and
 - (v) order the defendant to pay such allowance as it considers reasonable for the support of the child; and
- (b) where it is satisfied that –
 - (i) a child of the defendant is left without means of support; or
 - (ii) the defendant is about to leave the country without making adequate provision for the support of the child,
 the Court may –
 - (iii) order the defendant to pay such allowance as it considers reasonable for the support of the child; and
 - (iv) commit the legal custody of the child to the mother or some other person.

(2) An allowance ordered to be paid under Subsection (1) shall be paid weekly, fortnightly, or monthly, and to such person and in such manner as the Court orders.

(3) An order for the support of a child or an order committing custody of a child to a person does not continue in force after the child has attained the age of 16 years or died, except for the recovery of arrears then due under the order.

(4) On the hearing of a complaint under Section 2, where the Court is satisfied that reasonable cause has been shown for –

- (a) the desertion; or
- (b) the leaving without support; or
- (c) leaving the country,

it may decline to make an order.

(5) An order shall not be made on the application of a wife or a person on her behalf if it is proved that she has committed adultery or is of drunken habits, unless the husband has condoned or connived at the adultery or, by his cruelty, wilful neglect or misconduct, conduced to the adultery or drunken habits.

4. SECURITY.

(1) While an order made under this Act for the support of a wife or child remains in force, a Court, on notice given in such manner as the Court directs, may require the defendant to attend before it at the time and place specified in the notice and to show cause why he should not be ordered to enter into a recognizance with or without sureties for the due performance of the order for a period not exceeding 12 months.

(2) In default of the defendant's entering immediately into the recognizance with the required sureties (if any) the Court may commit him to prison for a term not exceeding 12 months or until the recognizance has been entered into, but the defendant shall be discharged from prison when the recognizance has been entered into with the required sureties notwithstanding the fact that the committal was for a specified term.

(3) On proof that a condition of a recognizance under Subsection (1) has not been complied with, a Court may *ex parte* adjudge the recognizance to be forfeited.

(4) A sum of money that a surety becomes liable to pay on the forfeiture of a recognizance is recoverable summarily before a Court.

(5) Where the circumstances appear to require it, a Court may, whether or not notice has been given to the defendant, issue a warrant directing the arrest of the defendant and that he be brought before a Court for the purposes of this section.

5. ATTACHMENT OF ANNUITIES.

(1) In making an order under Section 3 for the support of a wife or child, the Court, instead of or in addition to any other order for relief under this Act, may direct some person to demand and receive –

- (a) an annuity or other income payable to the husband or father; or
 - (b) moneys received or receivable or held by a person in trust to be paid periodically or by instalments or otherwise to or for the husband or father; or
 - (c) such portion of the annuity, income, or other moneys as the Court thinks proper,
- and to appropriate the proceeds towards the support of the wife or child in such manner as the Court directs.

(2) While an order made under Section 3 for the support of a wife or child remains in force, a Court –

- (a) to application made by or on behalf of the wife or child; and

(b) on notice given, in such manner as the Court directs, to all parties affected by it, may, by order, give a direction referred to in Subsection (1).

(3) A payment made under a direction under this section is as valid as if made to the husband or father or by his authority, and the direction protects and indemnifies a person acting under it.

6. SEIZURE OF DEFENDANT'S GOODS.

(1) Where, on the hearing of a complaint under Section 2, the Court is satisfied that the defendant has left his wife or child without means of support, it may, by order, direct some person to seize and sell the defendant's goods, chattels or securities, to demand and receive his rents or such portion of the goods, chattels, securities or rents as it thinks fit, and to appropriate the proceeds towards the payment of the allowance directed to be paid under the order in such manner as it directs.

(2) While an order made under Section 3 for the support of a wife or child remains in force, a Court –

(a) on application made by or on behalf of the wife or child; and

(b) on notice given, in such manner as the Court directs, to all parties affected, may, by order, give a direction referred to in Subsection (1).

7. FURTHER ORDERS.

Where an order has been made under this Act for the support of a wife or child, a Court, on notice to the defendant or *ex parte* in a summary way and with or without an application for the purpose, may make such further order as it thinks necessary for –

(a) better securing the payment and regulating the receipt of the allowance ordered for the support of the wife or child; or

(b) investing and applying the proceeds of goods, chattels, securities, or rents ordered to be sold or collected; or

(c) ensuring the due appropriation of the allowance to the support of the wife or child.

8. DISOBEDIENCE OF ORDER.

(1) On complaint on oath being made to a Court that a person has disobeyed or not complied with an order made under this Act, the Court may summon the person or issue a warrant for the arrest of the person to answer the complaint.

(2) A Court may inquire into a complaint under Subsection (1) and may enforce compliance with the order by the committal of the person summoned or arrested to prison for a period of one day for every 40t or part of 40t found to be due, including the costs of and incidental to the hearing of the complaint, unless the order is sooner complied with, but a person shall not be imprisoned under this subsection for a term longer than 12 months.

(3) A Court may refuse to enforce an order or may enforce it to such extent as it considers proper, having regard to all the circumstances of the case, particularly with reference to the inability of an offender to obtain employment or to comply with the order owing to continue ill health.

(4) The period of imprisonment served by a person under Subsection (2) shall not be deemed to discharge the arrears of the non-payment for which he has been committed under the provisions of that subsection, but during that period the order shall be deemed to be suspended.

(5) A person is not liable to be imprisoned a second time for non-payment of arrears in respect of which he has been imprisoned under Subsection (2).

(6) Where it appears that the amount of arrears due under an order made under this Act has been paid since the service of the summons or the issue of a warrant under this section, the Court may order the person summoned or arrested to pay the costs of and incidental to the proceedings.

(7) The Court may direct the warrant issued under this section committing a person to prison lie in the office of the Court for such time as it thinks proper.

(8) Where an order made under this Act contains a provision committing the legal custody of a child to the wife or some other person, a person who, after service on him of a copy of the order, makes default in complying with the order is guilty of an offence.

Penalty: A fine not exceeding K200.00.

9. WARRANTS.

On being satisfied by oath that a person has left or is about to leave the country to defeat any of the provisions of this Act or an order made under it, a Court may issue a warrant for the arrest of the person.

10. PROCEEDING IN DIVORCE, ETC.

(1) Except as provided in Subsection (2), orders may be made and enforced under this Act notwithstanding that proceedings may have been instituted under the *Matrimonial Causes Act* by a husband or a wife, or that an order has been made in any such proceedings.

(2) An order shall not be made under this Act –

- (a) for the support of a wife who is entitled to payment of alimony under an order made by the National Court in its Matrimonial Causes Jurisdiction; or
- (b) where a petition for alimony has been filed and is pending,

at the date of the application.

11. VARIATION OF ORDER.

(1) On application by or on behalf of a wife or child or the husband or parent, and on notice given in such manner as it directs to all parties affected, a Court may vary, suspend or discharge an order made by a Court under this Act.

(2) Subject to Subsection (3), an application under Subsection (1) shall be heard and determined by a Court sitting –

- (a) at a place agreed on by the parties; or
- (b) if either of the parties is resident in the province in which the order was made, at the place where the order was made; or
- (c) if neither of the parties is resident in that province, at a place in the province in which the respondent resides.

(3) The Court may postpone the hearing of an application under this section and direct that the application be heard and determined by a Court sitting at some other place specified by it.

(4) On the hearing of an application under this section, the Court may take into consideration all the circumstances of the case and the conduct and circumstances of the parties since the date of the order, and it may admit any evidence relating to the conduct and circumstances of the parties before and at the date of the order that it was satisfied was not available at the time when the order was made.

(5) An order may be varied, suspended or discharged as from a date before the application, and may be varied or suspended from time to time.

(6) Where a Court is satisfied that a husband and wife have resumed cohabitation and that the husband is supporting the wife, the Court, on the application of the husband or wife, shall discharge any order made under this Act for the support of the wife.

(7) Where a Court is satisfied that a wife who has obtained an order under this Act for her support has, since the date of the order, committed adultery, the Court shall discharge the order, but, if it thinks fit, the Court may –

- (a) refuse to discharge the order if in its opinion the adultery was conducted to by the failure of the husband to make such payments as in the opinion of the Court he was able to make under the order; and
- (b) in the event of the order being discharged, make an order that –
 - (i) the custody of the children of the marriage continue to be committed to the wife; and
 - (ii) the husband pay, weekly, fortnightly or monthly and to such person and in such manner as the Court orders, such allowance for the support of the children as it thinks reasonable.

(8) Where a Court is satisfied that there are good and sufficient reasons for the default, it may hear an application to vary, suspend, or discharge an order notwithstanding that the applicant is in default in complying with the order.

12. APPEAL.

A person aggrieved by an order or variation of an order, or by the dismissal of a complaint or the refusal of an application, under this Act, may appeal to the National Court in the manner prescribed for appeals to the National Court from the Court that made or varied the order, dismissed the complaint or refused the application, as the case may be.

13. ONE COMPLAINT ONLY NECESSARY.

One complaint may contain the allegation that a father has deserted or left without means of support more than one child, and one order may be made in respect of more than one child, but the order shall specify the amount payable in respect of each child.

14. WELFARE OF CHILD.

Where it appears on the hearing of a complaint that a father has left his child without means of support, the Court shall make such order as to the custody and support of the child as appears to it just, having regard primarily to the welfare of the child, and an order may be made notwithstanding that the father is willing to receive and maintain the child in his own home or elsewhere.

PART III. – PROTECTION ORDERS.**15. APPLICATION FOR PROTECTION ORDER.**

(1) At any time after the desertion, a wife deserted by her husband may apply *ex parte* to the National Court or to a Judge for an order against her husband or his creditors, or a person claiming under him, to protect personal property that she has acquired or may acquire after the desertion.

(2) An order made under Subsection (1) shall be made if the National Court or a Judge is satisfied, by affidavit, of the desertion, and that it was without reasonable cause, and –

- (a) shall contain a statement of the day of the desertion; and
- (b) has the effect of protecting all personal property acquired by the wife at any time after the desertion against her husband, his creditors and all persons claiming under him.

(3) While an order under this section continues in force, the wife shall be regarded as an unmarried woman with respect to –

- (a) personal property acquired after the desertion; and
- (b) contracts relating to such personal property; and
- (c) all other contracts entered into after the making of the order, other than contracts relating to real property.

(4) If the husband or any of his creditors, or a person claiming under him, seizes, takes or holds possession of property protected by an order made under this section without the permission of the wife, she may –

- (a) sue the husband, creditor or other person for the restoration of the specific property seized, held or taken; and
- (b) in the event of the property not being restored – recover in the suit a sum equal to double the value of the property with double costs of suit.

16. RESCISSION OF ORDER.

(1) After the making of an order under Section 15, the husband or any of his creditors, or a person claiming under him, may, on notice to the wife, apply to the National Court or to a Judge that the order be rescinded and the order shall be rescinded if it is proved, by affidavit or oral evidence, or both, to the satisfaction of the National Court or a Judge that the wife was not deserted without reasonable cause or that since the making of the order she and her husband have cohabited or resided together.

(2) If an order is rescinded under Subsection (1), the husband has the same rights and is subject to the same liabilities as if the order had not been made.

PART IV. – MISCELLANEOUS.**17. SPOUSE AS WITNESS.**

In all proceedings under this Act the spouse of a person is a competent and compellable witness for or against that person.

18. POWER TO COMPEL DEFENDANT TO GIVE EVIDENCE.

On the hearing of a compliant in which the defendant is charged with non-compliance with an order made under this Act, the defendant may be compelled to give evidence and may be summoned as a witness for that purpose.

19. PROOF OF MARRIAGE.

(1) On the hearing, a woman who complains that she has been deserted by her husband or left by him without means of support shall produce direct evidence of her marriage to the defendant or, if she is unable to produce direct evidence to the satisfaction of the Court, shall make and produce an affidavit setting out the time, place and circumstances of the marriage.

(2) An order made in a case referred to in Subsection (1) may be rescinded by a Court on proof of the falsity of the statements made in the evidence or in the affidavit.

20. CONSTRUCTIVE DESERTION.

For the purposes of this Act, a wife who has been compelled to leave her husband's residence under reasonable apprehension of danger to her person or under other circumstances that reasonably justify her withdrawal from that residence shall be deemed to have been deserted without reasonable cause.

21. EVIDENCE OF DESERTION.

(1) Where a husband has abandoned his wife, or a parent his child, for a period exceeding 80 days, and during 14 days at least of that period the wife or child has been left by the husband or parent without means of support, the husband or parent shall, *prima facie*, be deemed to have deserted the wife or child.

(2) This section does not prevent a Court, if it considers fit, from adjudging the fact of desertion on other evidence or on proof of abandonment for a period of less than 80 days.

22. DESERTION OF CHILD.

The father or mother of a child who is able to maintain the child, and who wilfully and without lawful or reasonable cause or excuse deserts the child and leaves it without means of support, is guilty of an offence.

Penalty: Imprisonment for a term not exceeding one year.

23. DESERTION OF WIFE.

A husband who without lawful or reasonable cause or excuse deserts his wife, leaves her without means of support and goes to reside either temporarily or permanently outside the country is guilty of an offence.

Penalty: Imprisonment for a term not exceeding one year.

24. SAVING OF LIABILITY UNDER THE UNDERLYING LAW.

This Act does not take away or diminish any liability, under the underlying law, of a husband in respect of contracts made by a wife deserted by her husband without reasonable cause.

25. COSTS.

In an order made under this Act a Court may order the payment by persons who are parties to the proceedings of such costs as it thinks proper.

26. APPLICATION OF DISTRICT COURTS ACT.

As far as applicable, the provisions of the *District Courts Act* not inconsistent with this Act apply, with the necessary modifications, to all matters and proceedings under this Act.

27. SERVICE OF SUMMONS.

(1) A summons under this Act may be served on the defendant personally, or if he cannot be found then at his last or most usual known place of residence.

(2) The person serving a summons under this Act may make an affidavit stating the mode and time and place of service and, if personal service has not been effected, that the defendant cannot be found, and the affidavit may be received by the Court as proof of the due service of the summons.

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